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File No. Cr. A. Bij / 41

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Legal DEPARTMENT

A BRANCH

Subject :—

Criminal Appeals in the High Court Bombay against the orders of acquittals.

District — Bijapur.

P & E,

File No. Cr. A. Bijapur / 41

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Judgment recorded by the High Court in Criminal Appeals Nos. 179 and 180 of the 1940 (by the Govern--ment of Bombay.) in the case of Imperator Vs. Raghu--nath Ramchandra Karlekar.

Mr. R.A. Jahagirdar, Government Pleader, for the (Government of Bombay). - Appellant.

Mr. K. G. Datar for the accused.

Cr. No. 9493
A/23 11-40

7th October 1940.

(Coram :- Broomfield and Wassoodew, JJ.)

Oral Judgment :- (Per Broomfield, J.) -

1 These are appeals by the Government of Bombay in two connected cases in which one Raghunath Ramchandra Karlekar, licensee and proprietor of an electric supply company at Ilkal in the Bijapur District was prosecuted for an alleged breach of rule 48 of the Indian Electricity Rules, 1937, and was acquitted by the Magistrate.

2 There is no dispute about the facts of the case. In the months of February and March 1938 the accused carried out certain small installation works on the premises of some half a dozen inhabitants of Ilkal. The installation works consisted of putting in in each case one light point with switches and cutouts. Three of these works were made the subject of one case and three of the other. The work was admittedly done at the expense of the supply company and the light points, switches etc. remained the property of the company.

D. p 358 2 Means Rule

3 Rule 48, which is alleged to have been infringed is as follows :-

Precautions to be adopted by consumers and owners, electrical contractors and electrical workmen

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(1) No electrial installation work, including additions, alterations, repairs and adjustments to existing installations, except such replacement of lamps, fans, fuses, switches and other component parts of the installation as in no way alters its capacity or character shall be carried out upon the premises or on behalf of any consumer or owner for the purposes of the supply of energy to such consumer or owner, except by an electrical contractor licensed by the Provincial Government in this behalf and under the direct supervision of a person holding a certificate of competency issued by the Provincial Government:

Provided that, the Provincial Government may by notification in the local official Gazette exempt on such conditions as it may impose any such description of work either generally or in the case of any specified class of consumers or owners from so much of this sub-rule as requires such work to be carried out by an electrical contractor licensed by the Provincial Government in this behalf:

Provided further that this rule shall not apply to any work carried out by or on behalf of the Government of India unless the Government of India so direct.

(2) This rule shall come into force in any province or part thereof on such date as the Provincial Government may by notification in the local official Gazette appoint."

4 The accused in this case holds a certificate of competency issued by the Provincial Government and it is not disputed that the works in question were carrie

out under his supervision. But the accused has not an electrical contractors license. It is by reason of the want of this license that the prosecution alleges the rule has been infringed.

The first difficulty in the way of the prosecution is that rule 48 under which the accused was charged did not come into force until the 22nd of March 1938. That was the date fixed in the notification issued under part (2) of the rule. It is common ground that the installation works in question were carried out by the accused in February and March 1938 before the 22nd of March 1938. But under the Indian Electricity Rules of 1922 there was a rule 40A, which was in precisely the same terms as the present rule 48. It is suggested, therefore, that the reference to rule 48 of the rules of 1937 was a mere slip, that the charge should have been under rule 40A of the rules of 1922, but that this mistake has not in any way prejudiced the accused, the wording of the two rules being precisely the same. That, however does not get rid of the difficulty. The rules of 1937 were introduced by a notification dated the 27th of March 1937 which was as follows:-

> In exercise of the powers conferred by section 37 of the Indian Electricity Act, 1910 (IX of 1910,) and in suppersession of the Indian Electricity Rules, 1922, the Governor General in Council is pleased after previous publication to make the following rules applicable to the whole of British India

Therefore the old rule 40A was superseded prima facie when the new rules were made applicable on the 27th of March 1937. As I have said, the corresponding new

rule 48 did not come into force until the 22nd of March 1938, and, according to the contention of the learned Advocate for the accused, in February and the first part of March 1938, when he carried out these installation works, there was no rule corresponding to the present rule 48 in force.

6 The learned Government Pleader attempts to get over this difficulty by relying on section 24 of the General Clauses Act, X of 1897. That provides, so far as it material, that where any Central Act or Regulation is repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any rule made under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made under the provisions so re-enacted, unless and until it is superseded by any rule made under the provisions so re-enacted. The learned Government Pleader's argument is that the old rule 40A cannot be considered to have been superseded by the Electricity Rules 1937 when they were made applicable on the 27th of March 1937 and was only superseded when the new rule 48 came into force in consequence of the notification issued under part (2) thereof. However, the notification by which the new rules were introduced expressly stated that they were in suppression of the Indian Electricity Rules 1922 and it is a little difficult to see how an exception is to be made in the case of rule 48. Another point is that Section 24 only comes into operation where a Central Act or Regulation has been repealed and re-enacted. According to the definitions in the General Clauses Act, neither Central Act nor Regulation would include

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a rule made under an Act, unless by some straining of language it is possible to say that the rule can be regarded as part of the Act, because it is provided that it is to have the same effect as though it were part of the Act.

7 Assuming, however, for the sake of argument that the old rule 40A can be regarded as having been in force at the time when the accused was prosecuted, we are not satisfied that a breach of the rule has in fact occurred. The accused has relied for his defence on the terms of a notification which was issued by the Bombay Government on the 5th of November 1934. It was as follows:

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" In the exercise of the powers conferred by the proviso to sub-rule (1) of rule 40A of the Indian Electricity Rules, 1922, the Governor in Council is pleased to direct that the following Administrations, Institutions and Bodies shall be exempted from the operation of the said sub-rule(1) of rule 40A in so far as their own works are concerned, namely :-

1. The Electrical Branch of the Public Works Department Bombay.
2. The State Railways.
3. The Victoria Jubilee Technical Institute, Bombay
4. The College of Engineering, Poona.
5. The N.E.D. Civil Engineering College, Karachi.
6. All Electric Supply Companies.
7. All factories within the meaning of the Indian Factories Act, 1911 (XII of 1911).
8. The Royal Indian Navy Dockyard, Bombay.
9. Railways other than State Railways.

Provided that in the case of bodies referred to at items, 7, 8 and 9 above, a person holding a certificate or competency is employed for supervising such works

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on their own premises."

8 The accused relies on the words "their own works" in this notification and contends that as the installation works in question were carried out by the company itself, and after being carried out remained the property of the company, they are the company's own works, and therefore the exemption given by this notification in the case of electric supply companies is applicable to him. The case depends therefore on the interpretation of this notification and in particular of the words "their own works". The learned Government Pleader says that what is meant is works carried out on the premises of the various bodies referred to, There seems to be no very good reason,however why the words "on their own premises" should be implied. It would have been very easy to say "works carried out by them on their own premises." Moreover, at the end of the notification there is a proviso that in the case of certain bodies "such works" which would naturally mean their own works, when carried out on their own premises, are not exempted unless a person holding a certificate of competency is employed for supervising them. If the words "their own works" in themselves meant works on the premises of the body concerned, the addition of the words "on their own premises" in this last proviso would have been unnecessary. This interpretation of the words therefore seems to be unacceptable.

9 The learned Government Pleader has argued with more force that the word "works" should be interpreted with reference to the definition contained in the Act.According to that definition "works" includes electric supply-lines and any buildings, machinery or apparatus required to supply energy and to carry into effect the objects of a license granted under Part II, which deals with the supply of energy. The definition is not exhaustive. Nevertheless a reference to other provisions in the Act does seem to

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indicate that when the expression "works" is used it usually means works connected with the supply of energy, and not lighting installations of the kind with which we are concerned which have nothing to do with the supply of energy. It is usually a sound rule of construction to give the same meaning to words used in rules made under an Act as the words have in the Act itself. We were therefore at first somewhat impressed by the argument put forward on behalf of Government in this respect. But when we look at the language of rule 48 or 40A it becomes extremely difficult, if not impossible, to suppose that the word "works" in the notification has the meaning ascribed to it in the definition in the Act. The The section begins by referring to "installation" works" and the description of the work there given clearly covers the kind of work which was carried out by the accused in this case and in respect of which he has been prosecuted. The work referred to there is quite obviously not work connected merely with the supply of energy. Then the notification goes on to say that the Provincial Government may by notification exempt any such description of work either generally or in the case of any specified class of consumers or owners from the requirement that a licensed electrical contractor must be employed. So that the kind of work referred to in the rule is not work connected with the supply of energy but electrical installation work, and, that being so, when we find the notification issued under the rule stating that certain bodies shall be exempted in so far as their own works are concerned, it seems reasonable to hold that by "works" is meant the kind of works referred to in the rule and not the kind of works referred to in the definition.

10 The words "their own works" would naturally mean works carried out by the exempted bodies themselves, or perhaps works belonging to them. In the present case the works were not only carried out by the electric supply company but were carried out at their own expense and remained their own - -

property. Since it seems to be clear that the notification applies to installation works, we find it impossible to say that the works carried out by the accused in this case are not such as can be fairly included in the expression "their own works" in this notification. If Government intended that the exemption was only to apply in the case of works carried out by the various bodies on their own premises, that intention has not been made sufficiently clear.

11 On behalf of Government reliance was also placed on rule 46 of the rules issued on the 15th of November 1932 in connection with the issue of certificates of competency under rule 40A of the Indian Electricity Rules, 1922. That rule is as follows :

"Supply companies to obtain contractor's licenses. - No electrical contracting work shall be carried out by any electric supply company unless they have obtained an Electrical Contractor's License and employed a separate staff of supervisors and wiremen, incompliance with these rules."

It is not clear, however, that the work carried out by the accused in this case can be described as electrical contracting work within the meaning of this rule. In any case, if he is exempted under the provisions of the notification from the operation of rule 40A, he could not be convicted of a breach of that rule, and it is a breach of that rule which is the subject of the charge.

12 For these reasons we are of opinion that the learned Magistrate was right in acquitting the accused in this case and we dismiss the appeals.

By the Court,
Sd. M.G.Rao.
Deputy Registrar.